No. 05-1545

Supreme Court, U.S.
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In The
Supreme Court of the United States

MEREDITH ODEN,

Petitioner,

v.

NORTHERN MARIANAS COLLEGE,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals' unanimous decision correctly determined its jurisdiction over pending appeals from the Supreme Court of the Northern Mariana Islands terminated due to the natural expiration of the jurisdictional statute.

JURISDICTION

The court of appeals entered its judgment on March 6, 2006. Petitioner did not file a petition for rehearing. The petition for a writ of certiorari was filed May 31, 2006. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

Respondent hereby incorporates by reference the statement of facts in the opinion below, 440 F.3d 1085, 1086-1087 (9th Cir. 2006), reproduced in Pet. App. 3-7.[1]

REASONS FOR DENYING THE WRIT

Petitioner urges the Court to grant the writ based upon her contention that "[t]here is nothing within [48 U.S.C.] § 1824(a) that indicates the Ninth Circuit would be divested of jurisdiction on timely filed appeals." Cert. Pet. at 4. The Court should deny certiorari for the following reasons:

1. Petitioner has not identified any conflict among the circuits on the narrow question presented, nor is

[1] Although Petitioner asserts that the trial court dismissed her complaint without addressing the tolling issue, this is unsupported by the record. The trial court addressed the tolling issue generally, Pet. App. at 40, 41, 42, and the provisions in 48 U.S.C. § 1367(d) specifically, Pet. App. at 38, 39. Accordingly, Petitioner was able to advocate her interpretation of 48 U.S.C. § 1367(d), albeit unsuccessfully, in two courts, the Commonwealth Superior Court and the Commonwealth Supreme Court.

respondent aware of any. Indeed, 48 U.S.C. § 1824 grants jurisdiction over appeals from the Supreme Court of the Commonwealth of Northern Mariana Islands ("Commonwealth Supreme Court") to one court of appeals, the Court of Appeals for the Ninth Circuit.

2. The question presented is unique to only a few litigants who sought review by the court of appeals of decisions issued by the Commonwealth Supreme Court and whose appeals were still pending when 48 U.S.C. § 1824 expired. Petitioner previously stated she was aware of only *one* other appeal from the Commonwealth Supreme Court pending before the court of appeals when section 1824 expired. Petitioner conceded, "It is unlikely that many more cases are up for decision in this jurisdictional posture." *Plaintiff/Appellant's Supplemental Brief* (Ninth Circuit, Appeal Nos. 00-16594, 03-16802, filed Jan. 27, 2006) at 7.

3. The decision below is consistent with prior decisions rendered by this Court. In the seminal case of *Ex Parte McCardle*, 74 (7 Wall.) U.S. 506 (1868), Congress repealed the act under which the Court had jurisdiction while the appeal was pending. *Id.* at 514. The Court determined that without jurisdiction, it could not proceed with the case (despite the fact that it had already been argued, submitted and taken under advisement). *Id.* Therefore, the Court held, "jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." *Id.*

A similar result was reached by the Court in *Bruner v. United States*, 343 U.S. 112 (1952). There, the statute conferring jurisdiction in the lower court was repealed

after certiorari was granted. *Id.* at 114. Relying on *McCardle*, the Court held, "[W]hen a law conferring jurisdiction is repealed without any reservation as to pending cases, all cases fall with the law. . . ." *Id.* at 116-117. *See also The Assessors v. Osbornes,* 76 U.S. (9 Wall.) 567, 575 (1870) (When Congress repeals the statute conferring jurisdiction, "the power to exercise such jurisdiction [is] withdrawn, and inasmuch as the repealing act contained no saving clause, all pending actions fell, as the jurisdiction depended entirely upon the act of Congress").

The court of appeals correctly applied the reasoning from *Bruner* and *Ex parte McCardle* in deciding that once the jurisdictional statute's fifteen year period expired, the court lost jurisdiction, mandating dismissal of any pending appeal. 440 F.3d at 1090-1091.

4. Petitioner's arguments do not justify granting the writ. Petitioner suggests *Bruner* and *Ex parte McCardle*, where Congress affirmatively repealed the jurisdictional statute, are distinguishable from 48 U.S.C. § 1824, where the jurisdictional statute expired naturally on a specified date. *See* Cert. Pet. at 4. The court of appeals considered and rejected this argument. "In both cases Congress gave us jurisdiction to hear local appeals for a limited period; in both cases Congress stripped us of the right to hear those appeals as of a date certain, without including a savings clause to allow us to decide pending cases." 440 F.3d at 1090-1091. The sound reasoning of the court of appeals should not be disturbed.

Offering no analysis, Petitioner also cites a single, district court case "for the proposition that where intent [to withdraw jurisdiction] is not clearly indicated jurisdiction

should remain." Cert. Pet. at 4 (citing *Get Oil Out, Inc. v. Andrus*, 477 F. Supp. 40 (C.D. Cal. 1979)). In *Get Out Oil*, a newly enacted statute provided that the court of appeals would hear all future actions of the Secretary of the Interior. The jurisdictional statute, 28 U.S.C. § 1331, remained intact. Thus, the district court determined *Bruner*, where Congress specifically withdrew the district court's jurisdiction, was not authoritative because the new statute did not deprive the district court of jurisdiction nor affect currently pending cases. *Get Out Oil*, 477 F. Supp. at 42. Consequently, *Get Out Oil* is distinguishable from our case because the court of appeals' jurisdictional authority was eliminated by Congress due to the statute's natural expiration.[2] *See* 48 U.S.C. § 1824.

Finally, Petitioner contends, without citing any authority, "The Ninth Circuit's assertion that it lacks jurisdiction to decide timely appeals on those issues is not in accord with the intent of Congress." Cert. Pet. at 3. To the contrary, the statute makes clear that upon expiration of the fifteen year period, relations between the Commonwealth's judiciary and the federal judiciary would parallel the relations between any state's judiciary and the federal judiciary. In other words, appeals from the Commonwealth Supreme Court would be heard only by this Court. *See* 440 F.3d at 1090 (relying on 48 U.S.C. § 1824).

Moreover, the plain language of 48 U.S.C. § 1824 unequivocally limits the court of appeals' jurisdiction over

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[2] Petitioner also notes that *Get Out Oil* cites *United States Fidelity & Guaranty Co. v. United States ex rel. Struthers Wells Co.*, 209 U.S. 306, 314 (1908). *Struthers*, however, did not concern the repeal or expiration of a jurisdictional statute. Instead, the Court addressed whether a statute altering both procedural and substantive rights of litigants could be applied retroactively. *Id.*, 209 U.S. at 315-317.

appeals from the Commonwealth Supreme Court "for the first fifteen years following establishment of the [Commonwealth Supreme Court]." *See id.* Congress did not insert a savings clause authorizing retention of jurisdiction over *pending* appeals from final decisions of the Commonwealth Supreme Court. Consequently, upon expiration of the fifteen year period, the court of appeals' jurisdiction terminated despite the existence of any pending appeals.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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